IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1066 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

KANTIJI SINGAJI DAMOR

Appearance:

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/04/98

ORAL JUDGEMENT (Per: B.C.Patel,J)

The State has preferred this appeal against the order of acquittal recorded by Additional Sessions Judge, Himmatnagar in Sessions Case No.124 of 1995 on 11-9-1997. The respondent-accused was tried for the offences

punishable under Secs.376 and 506(2) of the Indian Penal Code.

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#. On appreciation of evidence and on hearing the learned advocates appearing in the matter, learned Addl. Sessions Judge came to the conclusion that benefit of doubt is required to be given to the accused and acquitted the accused.

#. The short facts leading to the prosecution case are as under:

The prosecutrix-Sumitraben, who is the victim at the hands of the respondent, lodged her complaint before Bhiloda Police Station inter alia stating that on 11-6-1995, when she was near the stream of water, the accused came and dragged her towards the `chokdi' (hard surface for washing). She raised shouts and thereupon the accused gagged her mouth by one hand and thereafter, removed her clothes and without her consent, had sexual intercourse with her. It is the prosecution case that on raising the shouts, one Vasant Garmaji and Lilaben-sister of prosecutrix came there and on seeing them, the respondent-accused ran away from the place of incident. She was immediately, after recording the complaint, sent to Bhiloda Cottage Hospital for medical examination.

#. It is the prosecution case that the place where she had gone is a place meant for watering the cattle of the Village people. She has stated that when the respondent-accused caught her, there was grabbing and in that process, she had bleeding injuries. It is also clear from the evidence that the incident in question took place at about 10.30 a.m. There was a dispute between the respondent-accused and father of the prosecutrix and they were not on talking terms. The accused is a retired person from the Armed Force and because of his strictness, the relations were further strained. The incident, which is indicated in the complaint is alleged to have taken place at a distance of 15 feet away from the road. The houses of complainant, accused and other witnesses are situated very closely and the road is used by the people of the Village. It is also clear from the evidence that cattle were brought to that place for watering. If a shout is raised, same could be heard at the house of the complainant which shows that his house is situated very nearby. The report of F.S.L. and the medical evidence do not support the prosecution version. Dr.G.K.Amin, Gynaecologist, who examined the prosecutrix, has opined that there was no

marks indicating recent sexual intercourse and the prosecutrix was in habit of having sexual intercourse. The sample taken from the uterus did not indicate the presence of semen. Dr.Parmar has also examined the prosecutrix and has stated that there was nothing to indicate that there was recent sexual intercourse. F.S.L. report exh.34 clearly indicates that neither the blood nor the semen was found present either on the clothes of Sumitraben or on the saliva swab. Even report of Serologist exh.35 indicates that there is no sexual intercourse. Accused was also sent to the Medical Officer and on examination, the Medical Officer has opined that there was no sexual intercourse during the last 24 hours from the time of examination of the accused and thus, the trial Court came to the conclusion that there is nothing to indicate that there was sexual intercourse. Even the accused was found immediately from the Village and his medical examination did reveal that he committed no sexual intercourse. In view of these, the trial Court has come to the conclusion that accused is required to be given the benefit of doubt.

#. Learned Addl. Public Prosecutor was armed with the evidence, he read the relevant portion of evidence, but was not able to point out any evidence indicating involvement of accused by aid of independent evidence. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which, the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; ((2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt, and, (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses (AIR 1934 PC 227).

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR

> 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. In view of the above observation and also the facts and circumstances of the case, we are of the view that appeal is required to be rejected and is accordingly rejected.

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